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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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ELI LILLY AND COMPANY, )  
Plaintiff, )  
v. )  
ACTAVIS ELIZABETH LLC, GLENMARK ) Civil Action No. 07-3770 (DMC) (MF)  
PHARMACEUTICALS, INC., USA, SUN )  
PHARMACEUTICAL, INDUSTRIES )  
LIMITED, SANDOZ INC., MYLAN )  
PHARMACEUTICALS INC., APOTEX INC., )  
AUROBINDO PHARMA LTD., TEVA )  
PHARMACEUTICALS USA, INC., )  
SYNTHON LABORATORIES, INC., ZYDUS )  
PHARMACEUTICALS, USA, INC., )  
Defendants. )

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**[PROPOSED] ORDER GRANTING MOTION TO SEAL**

THIS MATTER having come before the Court upon the motion of Plaintiff Eli Lilly and Company ("Lilly") pursuant to Local Civil Rule 5.3(c) to seal (1) certain exhibits to the Certification of Melissa A. Chuderewicz in Support of Lilly's Opposition To Defendants' Motions for Summary Judgment of Non-Infringement, (2) Lilly's Response to Auobindo's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement, (3) Lilly Response to Mylan's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-

Infringement and (4) Lilly's Response to Sun's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement, and confidential portions of (5) Lilly's Combined Memorandum of Law in Opposition to Aurobindo, Mylan, and Sun's Motions for Summary Judgment of Non-Infringement, (6) Lilly's Combined Counterstatement To Defendants' Local Rule 56.1 Statements of Material Facts In Support Of Their Motions For Summary Judgment Of Non-Infringement, and (7) Lilly's Memorandum of Law Concerning Claim Construction in Opposition to Sun's Motion for Summary Judgment of Non-Infringement; and the Court having considered the written submissions of the parties; and the Court having determined that this action involves allegations regarding the disclosure of *and there being no opposition,* confidential and proprietary information, *and* for other and good cause having been shown,

**FINDINGS OF FACT**

1. The materials that Lilly seeks to seal contain information designated by Defendants or Lilly in this matter as "Confidential" under the Protective Order, entered in this matter on August 6, 2008.
2. This is a complex pharmaceutical patent infringement action. As such, a significant portion of the materials exchanged in discovery, and subsequently filed with the Court in connection with pretrial proceedings, contain proprietary and confidential research, development and business information of the parties.
3. By designating their material as "Confidential" under the Order, Defendants have represented that the subject information is trade secret or other confidential or proprietary research, development, commercial or financial information within the meaning of Fed. R. Civ. P. 26(c).

4. Lilly has demonstrated that, for the information it has designated as "Confidential," Lilly has a legitimate interest to protect this information as confidential because Lilly would otherwise suffer injury that could not be avoided without sealing this information.
5. Defendants have represented that public disclosure of their own confidential information would be detrimental to their business. Due to the nature of the materials described herein, there is no less restrictive alternative to filing under seal Exhibits 6-8, 10, 13, 16-18, 20-21, 24-25, and 29 to the Certification of Melissa A. Chuderewicz in Support of Lilly's Opposition to Defendants' Motions for Summary Judgment of Non-Infringement; Lilly's Response to Aurobindo's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement; Lilly's Response to Mylan's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement; and Lilly's Response to Sun's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement; and redacted portions of Lilly's Combined Memorandum of Law in Opposition to Aurobindo, Mylan, and Sun's Motions for Summary Judgment of Non-Infringement; Lilly's Combined Counterstatement To Defendants' Local Rule 56.1 Statements of Material Facts In Support Of Their Motions For Summary Judgment Of Non-Infringement; and Lilly's Memorandum of Law Concerning Claim Construction in Opposition to Sun's Motion for Summary Judgment of Non-Infringement that quote or summarize the information contained in those exhibits.
6. Lilly has represented that public disclosure of its confidential information would be detrimental to its business. Due to the nature of the materials described herein, there is no less restrictive alternative to filing under seal Exhibits 9, 11-12, 19, 23, 26-28, 30-31,

33, 37, 43-45, and 54 to the Certification of Melissa A. Chuderewicz in Support of Lilly's Opposition to Defendants' Motions for Summary Judgment of Non-Infringement; Lilly's Response to Aurobindo's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement; Lilly's Response to Mylan's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement; and Lilly's Response to Sun's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement; and redacted portions of Lilly's Combined Memorandum of Law in Opposition to Aurobindo, Mylan, and Sun's Motions for Summary Judgment of Non-Infringement; Lilly's Combined Counterstatement To Defendants' Local Rule 56.1 Statements of Material Facts In Support Of Their Motions For Summary Judgment Of Non-Infringement; and Lilly's Memorandum of Law Concerning Claim Construction in Opposition to Sun's Motion for Summary Judgment of Non-Infringement that quote or summarize the information contained in those exhibits.

**CONCLUSIONS OF LAW**

7. Upon consideration of the papers submitted in support of the motion and the materials that Defendants have designated as "Confidential" for which Lilly is required to seek to have the Court seal, the Court concludes that Lilly has met its burden of proving, under L. Civ. R. 5.3 and applicable case law, that the materials described above should be filed under seal. Specifically, the Court concludes that: (a) the materials contain confidential information concerning Defendants' business; (b) that Defendants have a legitimate interest in maintaining the confidentiality of the material in order to protect its disclosure to potential competitors who can use the material and the information contained therein

for commercial purposes; (c) that public disclosure of the material would result in clearly defined and serious injury, including the use of the material by competitors to Defendants' financial detriment; and (d) no less restrictive alternative to sealing the subject documents is available.

8. Upon consideration of the papers submitted in support of the motion and the materials that Lilly has designated as "Confidential" for which Lilly is required to seek to have the Court seal, the Court concludes that Lilly has met its burden of proving, under L. Civ. R. 5.3 and applicable case law, that the materials described above should be filed under seal. Specifically, the Court concludes that: (a) the materials contain confidential information concerning Lilly's business; (b) that Lilly has a legitimate interest in maintaining the confidentiality of the material in order to protect its disclosure to potential competitors who can use the material and the information contained therein for commercial purposes; (c) that public disclosure of the material would result in clearly defined and serious injury, including the use of the material by competitors to Lilly's financial detriment; and (d) no less restrictive alternative to sealing the subject documents is available.
9. The foregoing conclusions are supported by relevant case law holding that the right of public access to the court filings is not absolute, and may be overcome by a showing such as made here, in the discretion of the trial court. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 603 (1978). The Court, upon such a proper showing, may in its discretion prevent confidential materials from being transmuted into materials presumptively subject to public access. *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 143 n.8 (2d Cir. 2004).

**BASED UPON** the foregoing findings of fact and conclusions of law, it is:

**ORDERED** that Lilly's Motion to Seal is hereby **GRANTED**;

**IT IS FURTHER ORDERED** that the following material is sealed:

- a. Exhibits 6-13, 16-21, 23-31, 33, 37, 43-45, 54 to the Certification of Melissa A. Chuderewicz in Support of Lilly's Opposition To Defendants' Motions for Summary Judgment of Non-Infringement;
- b. Lilly's Response to Aurobindo's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement;
- c. Lilly Response to Mylan's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement;
- d. Lilly's Response to Sun's Local Rule 56.1 Statement of Undisputed Material Facts In Support Of Its Motion For Summary Judgment Of Non-Infringement;
- e. Redacted portions of Lilly's Combined Memorandum of Law in Opposition to Aurobindo, Mylan, and Sun's Motions for Summary Judgment of Non-Infringement;
- f. Redacted portions of Lilly's Combined Counterstatement To Defendants' Local Rule 56.1 Statements of Material Facts In Support Of Their Motions For Summary Judgment Of Non-Infringement;
- g. Redacted portions of Lilly's Memorandum of Law Concerning Claim Construction in Opposition to Sun's Motion for Summary Judgment of Non-Infringement.

**IT IS FURTHER ORDERED** that Lilly file a redacted version of all documents it seeks to seal by virtue of this order on or before September 30, 2009.

**SO ORDERED** this 11<sup>th</sup> day of September, 2009.

  
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Hon. Dennis M. Cavanaugh, U.S.D.J.

**MARK FALK**  
**U.S. Magistrate Judge**